

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

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CLAIMANTS: Aubyn A. Curtiss; David R. Curtiss

CASE 76D-0115-R-2023
76D 143702-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 76D 143702-00 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms

the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. This claim did not receive any objections or notices of intent to appear.

Further proceedings are unnecessary to resolve the issue remarks. For organizational purposes, this claim is consolidated into Water Court Case 76D-0115-R-2023.

FINDINGS OF FACT

1. Claim 76D 143702-00 appeared with the following issue remarks:

THIS CLAIM AND WATER RIGHT NO. 76D 52713 00 APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973.

2. Multiple memorandums included in the claim file indicate this claim is for a well drilled after July 1, 1973 and that the DNRC issued a groundwater certificate for that well. That groundwater certificate is documented as Water Right No. 52713-00.

3. The well log included with the statement of claim form for Claim 76D 143702-00 indicates the well was completed on July 6, 1973. This may not necessarily be the date of first beneficial use, but the date of first use would still be after July 1, 1973.

4. The well in question is accounted for by Water Right No. 52713-00.

5. Claim 76D 143702-00 should be dismissed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the

claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. Rule 1, W. R. Adj. R. An existing water right is a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Rule 2(a)(22), W.R.C.E.R; Section 85-2-102(13), MCA.

5. “Priority date” means the allocation date associated with a beneficial use of water” W.R.C.E.R. 2(a)(55).

CONCLUSIONS OF LAW

1. Claim 76D 143702-00 may be dismissed because it is not an “existing right.” The claimed water right is a post-July 1, 1973 appropriation outside of the Water Court’s jurisdiction. The claim is also a duplicate of Water Right No. 52713-00 as both the claim and the groundwater certificate document the same water right.

2. The issue remarks are moot due to the dismissal of the claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court dismiss the above-captioned claim. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Aubyn A. Curtiss
David R. Curtiss
PO Box 216
Fortine, MT 59918

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 143702-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: DAVID R CURTISS
DECEASED
PO BOX 216
FORTINE, MT 59918

AUBYN A CURTISS
PO BOX 216
FORTINE, MT 59918

Priority Date:

Type of Historical Right:

Purpose (use): DOMESTIC

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.